REMARKS

I.   Status of the Application

Claims 1-46 are pending in this application. In the January 14, 2005 office action, the Examiner:

A.   Objected to claim 30 under 37 C.F.R. §1.75(c) as allegedly being of improper form;

B.   Provisionally rejected claims 1, 5 and 26 under 35 U.S.C. § 101 as allegedly claiming the same invention as that of claims 1, 8 and 20 of copending application serial no 09/966738, which is this application;

C.   Rejected claims 1-2, 3-5, 8, 10-13, 15-16, 18-22, 25, 27-34, 36-39, 40-43 and 45-46 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,763,040 to Hite et al. (hereinafter "Hite");

D.   Rejected claims 9, 14, 17 and 44 under 35 U.S.C. § 103(a) as allegedly being obvious over Hite;

E.   Rejected claims 6 and 7 under 35 U.S.C. § 103(a) as allegedly being obvious over Hite in view of U.S. Patent Publication No. 2002/0174240 A1 to Nason et al. (hereinafter "Nason"); and

F.   Rejected claims 23-24, 26 and 35 under 35 U.S.C. § 103(a) as allegedly being obvious over Hite in view of U.S. Patent No. 6,775,692 to Albert et al. (hereinafter "Albert").

In this response, applicants have amended claims 1, 15-17 and 30 to clarify the claimed subject matter. Applicants have further canceled claims 14, 40-46 and have added

new claims 47-53. Applicants respectfully traverse the rejections of the claims in view of the foregoing amendments and the following remarks.

II.   The Objection to Claim 30 is Moot

The Examiner objected to claim 30 as failing to further limit the subject matter of a previous claim. In particular, claim 30 was identical in scope to claim 29. In this amendment, claim 30 has been amended to depend from claim 2 instead of claim 1. Claim 30 therefore now has a different scope that claim 30 had prior to the amendment. As a consequence, claim 30 as amended has a different scope than claim 29. It is therefore respectfully submitted that the objection to claim 30 under 37 C.F.R. §1.75(c) is moot and should be withdrawn.

III.   The Double Patenting Rejection Should be Withdrawn

The Examiner provisionally rejected claims 1, 5 and 26 as allegedly claiming the same invention as claims 1, 8 and 20 of "copending application no. 09966738". It is noted that application no. 09966738 is the present application. It appears that the office action obviously contains a minor, inadvertent error in this respect.

Regardless, claim 1 has been amended to essentially incorporate the limitations of claim 14. In addition, claims 5 and 26 depend from claim 1. Because claim 14 was not rejected for double patenting, and because claims 1, 5 and 26 now all directly or indirectly incorporate all of the limitations of claim 14, the double patenting rejection is moot and should be withdrawn.

IV.   Claim 1 is Not Obvious Over Hite

In the January 14, 2005 office action, the Examiner rejected claim 1 as allegedly being anticipated by Hite. Claim 1 was amended to incorporate the limitations of claim 14, which depended from claim 1. As a result, amended claim 1 is substantially the same in scope as original claim 14. In the January 14, 2005 office action, the Examiner rejected claim 14 as allegedly being obvious over Hite. As will be discussed below in detail, there is no motivation or suggestion to modify Hite as proposed by the Examiner.

A.   The Present Invention

Claim 1 is directed to a proprietary communication protocol for use in a system controller that includes an application controller and a plurality of applications for controlling a plurality of device controllers on a control network by using data relating to system points that correspond to data variables in the network. Thus, there are application controllers, device controllers and a plurality of applications. The protocol includes a plurality of predefined messages transmitted between the application controller and the applications for instructing the application controller to perform a function relating to a select system point. The predefined message are also used for reporting to the applications in response to the instruction. As amended claim 1 recites that the plurality of messages includes a discover message transmitted from the applications to the application controller for inquiring whether the select system point is stored in a database of the application controller.

The protocol also includes a message identification field for identifying a select message from said plurality of messages, and, a protocol identification field for identifying said select message as being transmitted via said proprietary communication protocol.

B.   Hite

Hite discloses a protocol that includes a packet protocol. The packet protocol includes

a protocol field, a length of data field, a data field, and a checksum. The protocol field

indicates the type of protocol. The length of data field lists the length, in bytes, of the data

field. The data field contains the sub protocol data and the checksum determines the integrity

of the packet. (Hite at Abstract). In pertinent part, Hite further teaches various control

operations may be performed from remote host computers or control stations, such as 310 of

Fig. 8. The control station 310 communicates through the Internet to a server, which in turn is

connected to a number of control area networks, each having controllers connected thereto.

C.   No Motivation to Modify Hite as Proposed

As admitted by the Examiner, Hite fails to disclose or "teach about a message

transmitted from the applications to the application controller for inquiring whether the select

system point is stored in a database of the application controller." However, the Examiner

stated the following reason to modify Hite to include such a limitation:

> [Hite] does teach about a message transmitted from the applications to the application
> controller for inquiring about various conditions (Col 43, lines 35-45, Col 50, line 60-65) and
> that the select system point is stored in a database of the application controller (Col 9, lines 25-
> 32). Adding the above feature of sending a message to inquire if the select system point is
> stored in a database of the application controller would have been obvious to one of ordinary
> skill in the art at the time of invention because it would result in a more efficient and reliable
> system. It is for this reason that one of ordinary skill in the art at the time of invention would
> have been motivated to make the above mentioned modifications.

(Office action at pp.11-12). Thus, the Examiner asserts that Hite has an application controller

that already maintains system points in a database, and therefore it would have been obvious

to add the message to inquire if the system point is stored in the data base "because it would

result in a more efficient and reliable system". (Id.)

It is respectfully submitted that the above reasoning does not set forth a legally sufficient motivation or suggestion to modify Hite as proposed by the Examiner for at least two distinct reasons. First, the above-quoted reasoning relies on Hite as teaching application controllers having databases with system points stored therein, and Hite contains no such teaching. Second, a desire for a more efficient and reliable system would not lead one add a new message that inquires an application controller as to whether a particular point is stored in its database.

1.   The Examiner Has Mischaracterized the Teachings of Hite

As discussed above, the obviousness rejection of claim 14 (now pertinent to claim 1 as amended) relies on the faulty premise that Hite teaches an application controller that has a database in which system points are stored. Hite does not contain such a teaching.

The Examiner does not specifically state, in the rejection of claim 1, which parts of Hite constitute the applications, the application controllers, and the device controllers. However, in the rejection of claim 14, the Examiner appears to allege that the application controller is the control system 310. In particular, the Examiner states that col. 9, lines 25-32 of Hite describe storage of a system point in a data base of an application controller. (Office action at p.11). That cited portion of Hite describes the control system 310. Moreover, the only database discussed therein is the database 314 of the control system 310.

It is noted, however, that the control system 310 cannot constitute the claimed application controllers because the control system 310 does not *perform a function relating to a select system point as a result of communication with an application, and then report to the application in response to said instruction.* Such is required of the application controller in

claim 1. The control system 310 does not communicate with any application, except for those further "downstream" toward the device controllers. The application as claimed cannot be "downstream" of the application controller because if it were, the application controller would not perform a function relating to a system point and *then report back* to the application. The control system 310, if anything, would be an application, not an application controller as claimed.

Accordingly, Hite does not teach a device that constitutes the application controller of claim 1 and which has a database that stores system data points. Because the Examiner relies on this nonexistent teaching in establishing a motivation or suggestion to modify Hite, it is respectfully submitted that the Examiner's rejection of claim 14 (now claim 1) is in error and should be withdrawn.

2. Efficiency and Reliability of Modification Not Taught Nor Sufficient

Even if Hite did teach an application controller as claimed, which also had a database containing system point data, the Examiner has nevertheless failed to set forth a legally sufficient motivation or suggestion to modify Hite as proposed. As discussed above, the cited motivation was to increase efficiency and reliability.

However, there is no teaching in the art that modifying Hite as proposed would add to reliability or efficiency. Specifically, the prior art does not discuss how reliability (or efficiency) of a protocol is enhanced by adding a command to determine if a point is in a database of an application controller. To the contrary, it is intuitive that the addition of a command of a protocol tends to increase its complexity, and thus arguably decreases reliability, if not efficiency. SNMP, for example, is a highly efficient and reliable protocol

because it has few commands. Regardless, the prior art does not teach or suggest that addition of this particular message in this context adds efficiency or reliability.

Moreover, there is nothing in the art to suggest that one of ordinary skill in the art, seeking to enhance the efficiency or reliability of Hite, would add a message protocol that would inquire an application controller as to whether a particular point is in its database. The goal of increasing efficient and reliability would not lead someone to such an arbitrary addition.

Accordingly, because the goals of increasing efficiency and reliability do not constitute legally sufficient motivations or suggestions to modify Hite as proposed by the Eaxminer, it is respectfully submitted that the obvious rejection claim 14 (now claim 1) is in error and should be withdrawn.

V.   Claims 2-13, 15-39

Claims 2-13 and 15-39 all stand rejected as being anticipated by, or obvious over, Hite, either alone or in combination with Nason or Albert. Claims 2-13 and 15-39 all depend from and incorporate all of the limitations of claim 1. The proposed combinations of Hite with Nason or Albert are equally deficient with respect to the limitations of claim 1, discussed above. Accordingly, for at least the same reasons as those set forth above in connection with claim 1, it is respectfully submitted that the rejection of claims 2-13 and 15-39 over Hite should be withdrawn.

VI.   Claims 47-53

New claim 47 essentially represents claim 11 as originally filed. Claim 11 stands rejected as allegedly being anticipated by Hite. However, Hite does not teach all of the limitations of original claim 11 (now claim 47).

In particular, claim 47 recites "further including a field for determining a format for displaying [an] element value". In the rejection of claim 11, the Examiner asserted that Hite taught such a field at col. 15. (Office action at p.5). Applicants respectfully disagree. Column 15 of Hite describes a table of commands, none of which appear to relate to "displays". The commands listed are *Port Count, Request Output Channel, Output Channel Count, Request Level Count, Level Count, Request String Size, String Size, Request Command Size, Command Size, and Request Level Size.* None of the foregoing relate to displaying information. Nowhere in column 15 of Hite does it describe a field in those commands that relates to display formatting.

Accordingly, it is respectfully submitted that claim 11 as filed (now claim 47) is *not* anticipated by Hite. New claim 47 is therefore in a condition for allowance.

Claims 48-53 all depend from and incorporate all of the limitations of claim 47. Thus, for at least the same reasons, it is respectfully submitted that claims 48-52 are in a condition for allowance.

VI.   Conclusion

For all of the foregoing reasons, it is respectfully submitted the applicants have made a patentable contribution to the art. Favorable reconsideration and allowance of this application is, therefore, respectfully requested.

Respectfully submitted,

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